

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DEANNA ROBBINS,

Plaintiff,

v.

MERIT SYSTEMS PROTECTION
BOARD,

Defendant.

No. 2:21-cv-00621-KJM-DMC

ORDER

Plaintiff, who is proceeding pro se, brings this civil action. The matter was referred to a United States Magistrate Judge as provided by Eastern District of California local rules. On May 14, 2024, the Magistrate Judge filed findings and recommendations, which were served on the parties, and which contained notice that the parties may file objections within the time specified therein. Defendant filed timely objections to the findings and recommendations.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this court has conducted a *de novo* review of this case. Having reviewed the file, the court finds the findings and recommendations to be supported by the record and by the proper analysis.

In the objections, defendant argues this is not a mixed case over which this court has jurisdiction. *See* ECF No. 32. Defendant also argues that, even if this is a mixed case, the proper defendant is plaintiff's former employer—the Sierra Army Depot—and not the Merit Systems

1 Protection Board. *See id.* Defendant did not raise this argument in its motion to dismiss. The
2 court finds the Magistrate Judge did not err in concluding that, liberally construed, plaintiff's first
3 amended complaint presents a mixed case involving alleged discrimination. Defendant's
4 argument concerning the proper defendant, however, is well taken. The court will permit plaintiff
5 an opportunity to amend to name the proper defendant for a mixed case and to allege exhaustion
6 of administrative remedies as to that defendant.

7 Given its granting of leave to amend, the court also finds the appointment of counsel for
8 plaintiff is warranted for the limited purpose of assisting in properly amending the complaint.
9 The court has requested its pro bono panel coordinator, Sujean Park, assist in locating counsel for
10 this purpose and anticipates appointing counsel shortly.

11 Accordingly, IT IS HEREBY ORDERED as follows:

12 1. The findings and recommendations filed May 14, 2024, ECF No. 30, are
13 adopted in full.

14 2. Defendant's renewed motion to dismiss, ECF No. 28, is DENIED.

15 3. The parties' motions to stay proceedings for the month of July 2024 to
16 allow for settlement discussions, ECF Nos. 33 and 35, are DENIED as moot.

17 4. Plaintiff's first amended complaint is DISMISSED with leave to amend to
18 name the proper defendant for a mixed case and to allege exhaustion of administrative remedies
19 as to that defendant.

20 5. Plaintiff shall file a second amended complaint within 30 days of the date
21 on which the court appoints limited purpose counsel. The appointed counsel's duties will
22 terminate once plaintiff's amended complaint has been filed.

23 6. The court will appoint counsel upon the identification of counsel by Sujean
24 Park. Appointed counsel shall notify Ms. Park via email at spark@caed.uscourts.gov if they have
25 any questions related to the appointment.

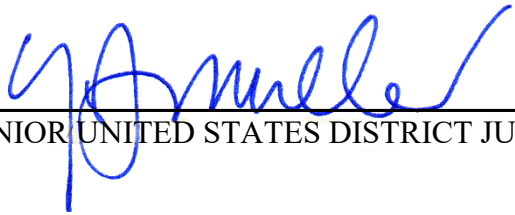
26 /////

27 /////

28 /////

1 7. This matter is referred back to the assigned Magistrate Judge for further
2 proceedings.

3 DATED: October 3, 2024.

4
5 
6 SENIOR UNITED STATES DISTRICT JUDGE
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28